Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	Docket No. 12-268

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*")[2] released by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceeding, which solicits input on the best way to structure and conduct the Commission's proposed incentive auctions for digital television spectrum, including auction design for the reverse and forward auctions of spectrum, the proposed 600 MHz band plan and the spectrum licensing rules. The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

As an initial matter, MetroPCS applauds the Commission's creative, forward-thinking effort to unleash much needed spectrum for commercial mobile broadband use. As the Commission properly recognizes, "usage…of wireless networks is skyrocketing, dramatically

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, FCC 12-118, Docket No. 12-268 (rel. Oct. 2, 2012) ("*NPRM*").

increasing demands" for spectrum.[3] MetroPCS wholeheartedly agrees that meeting the "[spectrum scarcity] challenge is essential to continuing U.S. leadership in technological innovation, growing our economy, and maintaining our global competitiveness."[4] Indeed, MetroPCS has long been an avid vocal advocate for the release of additional paired broadband spectrum for commercial wireless use,[5] and is pleased to see that progress is being made and that spectrum resources appear to be on the horizon. Spectrum is of paramount importance for the wireless industry, and the need is particularly acute for small and mid-sized competitive carriers. As the Commission knows, customers are consuming ever-increasing amounts of broadband data services and all carriers, both large and small, require spectrum to meet this growing demand. Access to additional spectrum resources also will enable competitive carriers to better compete with the largest carriers, despite gross imbalances in revenues and available resources for capital expenditures. Conversely, the current scarcity of spectrum is driving increased industry consolidation, causing a dearth of new entrants and fostering an increasing number of metered data plans to address the escalating data usage. In this environment, the incentive auction has become an increasingly important component of the Commission's goal to release an additional 500 MHz of spectrum for commercial use by 2020.[6] Identifying and allocating the spectrum, however, is only the first step in the process of making additional spectrum available. The

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[3] *NPRM* at ¶ 1.

[4] *Id.*

[5] *See, e.g.*, Comments of MetroPCS Communications, Inc., WT Docket No. 11-186, at 34-37 (filed Dec. 5, 2011); Comments of MetroPCS Communications, Inc., WT Docket No. 10-133, at 19-24 (filed Jul. 30, 2010).

[6] "Winning the Global Bandwidth Race: Opportunities and Challenges for Mobil Broadband," Prepared remarks of FCC Chairman Julius Genachowski, University of Pennsylvania – Wharton, Philadelphia, PA (Oct. 4, 2012), *available at* http://www.fcc.gov/document/chairman-genachowski-winning-global-bandwidth-race.

Commission now must design the auction to ensure success. The *NPRM* evidences the critical thought the Commission already has put into this important endeavor, and asks all the right questions for the process to move forward in a deliberative fashion. The job now is to create a process which will increase the spectrum available for CMRS services while promoting a number of other important policy goals.[7]

In order to make the incentive auction a success for both broadcasters and wireless providers alike, the Commission must design it with the following three basic, yet critical, principles in mind: (i) simplicity; (ii) transparency; and (iii) flexibility. Designing an auction process that follows these three principles will yield the greatest amount of spectrum for the wireless industry, while fairly compensating broadcasters and the U.S. government in the process. Simplicity, transparency and flexibility also will encourage broad participation by broadcasters, while promoting the wide distribution of auctioned licenses among existing wireless carriers, including new entrants and competitive carriers, like MetroPCS, which are particularly spectrum-starved and face tough choices if they cannot secure additional spectrum. The incentive auction presents an inventive way for the Commission to recapture a significant amount of very valuable below 1 GHz spectrum – but the Commission will have only one primary opportunity to get it right. To optimize the results, the Commission must avoid an overly-complex auction process that will discourage participation by smaller bidders due to the costs of participation and the risks of unintended outcomes. If the incentive auction rules are focused on simplicity, transparency and flexibility, the Commission will have created a true win-win-win-win situation for broadcasters, wireless providers, consumers and the U.S. Treasury.

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[7] These policy goals should be to ensure that spectrum is quickly delivered to the CMRS industry, the amount of spectrum delivered is maximized and everyone who needs spectrum is given a fair opportunity to acquire it.

II. THE DESIGN OF THE FORWARD AND REVERSE AUCTIONS MUST BE SIMPLE, TRANSPARENT AND FLEXIBLE

As noted above, the Commission has but one chance to properly design the incentive auction, and simply must get it right. By properly designing both the forward and reverse auctions, the Commission can put itself on the road to success long before the first electronic bid is cast. The design of the auctions should encourage wide participation by a range of broadcasters, both large and small, and commercial wireless bidders, both large and small, and promote predictability for all involved. Above all else, the auctions should be designed to the extent possible to avoid some of the complexities and unintended consequences that have plagued past auctions. This is particularly critical in order to encourage broadcaster participation. For example, while MetroPCS has participated in a large number of wireless spectrum auctions, the auction process is entirely new to many broadcasters. Because of this, it will be important for the auction process to be understandable and straightforward so that broadcasters do not decline to participate out of a concern that the process is too complicated or that it may generate unintended results. And, while many wireless carriers have participated in spectrum auctions before, a reverse auction followed by a forward auction is a first-of-its kind event for the Commission and wireless carriers alike. By adhering to the governing principles that the reverse and forward auctions must be simple, transparent and flexible, the Commission will encourage broad participation by broadcasters and new and existing wireless carriers alike, thus accomplishing its directive to unleash additional spectrum while recouping fair value for the U.S. Treasury.

A. The Reverse Auction

1. The Commission Must Encourage Maximum Broadcaster Participation

As the Commission is no doubt aware, the crucial gating item for the success of the incentive auction is robust broadcaster participation. Simply put, if the broadcasters do not show up at the reverse auction, the forward auction will be a grim affair. As a starting point to encouraging maximum broadcaster participation, the Commission must design a process that allows broadcasters to know what to expect well in advance. Making the process as straightforward and simple as possible will foster participation by smaller broadcasters who may be unwilling to put together an elaborate team of auction experts to help them navigate a complicated process. Obviously any auction design model that causes smaller broadcasters to stay on the sidelines or post unrealistic bids will significantly undermine the success of the incentive auction. An auction capable of attracting participation by smaller broadcasters also will prove manageable for larger broadcasters, thus resulting in broadcasters of all types being spurred to participate.

One of the guiding principles the Commission should adopt is to allow broadcasters who agree to return their spectrum to retain and receive as much value as is practicable. Properly viewed, the bundle of rights that is important to a broadcaster's business does not begin and end with the right to broadcast over 6 MHz of spectrum. A broadcast spectrum license brings with it a number of rights, only one of which is the ability to transmit over-the-air television signals to a defined area. To the extent the Commission can allow broadcasters to retain the other valuable ancillary rights, this will help drive down the price at which broadcasters will be willing to return their license and also increase the likelihood they will elect to participate.

To that end, participation in the forward auction would be promoted by allowing broadcasters to retain all of their current rights as broadcasters (except the right to transmit on the relinquished spectrum), and by granting additional flexible use rights in any spectrum retained by

auction participants. For example, a broadcast license includes must carry/retransmission consent rights, the right to lease multicast channel capacity, and if they retain spectrum, the right to provide other services over their broadcast spectrum. These ancillary rights are valuable components of the traditional broadcast business model. To encourage maximum participation, the Commission should allow broadcasters, whenever possible, to maximize their value by retaining these rights separate and apart from the spectrum that they relinquish in the reverse auction.

For example, the Commission should ensure that any broadcaster relinquishing rights to a UHF channel for a VHF channel be entitled to the same carriage rights that they held as a UHF broadcaster. Similarly, any broadcaster agreeing to a channel sharing arrangement and relinquishing a portion of its spectrum also should retain its current carriage rights. In addition, the Commission should explore whether there is a supportable legal basis for allowing broadcasters who have relinquished spectrum entirely, but continue to broadcast a feed, for example, over the Internet, to retain their must carry rights. The Commission might also consider granting broadcasters who relinquish a portion of their spectrum special rights to offer new or unique services, such as two-way services, over the remaining spectrum.

2. The Reverse Auction Procedures Must Encourage the Best Possible Results

Once broadcasters have been brought to the table, the reverse auction must be designed in a way that increases the prospect that broadcasters will actually relinquish spectrum, in exchange for fair value for this spectrum. For example, MetroPCS strongly encourages a multi-round ascending auction that will allow broadcasters to engage in price discovery. Rather than submitting sealed bids, an open, multi-round auction enables broadcasters to test the waters, assess the market, and make informed business decisions about the nature and extent of their

participation. An open process of this nature will enable broadcasters to better understand the market value of the spectrum rights being relinquished.

The Commission proposes a descending clock auction,[8] but MetroPCS submits that an open ascending auction will create greater transparency and permit the wireless carriers to better understand the spectrum that will be available in the forward auction. MetroPCS' proposed open ascending auction would create a "ladder" of available spectrum, so that forward auction participants will be completely aware of the clearing price for various spectrum licenses. For example, an ascending ladder auction in the hypothetical broadcast market of Midcity, USA might begin at $10 and rise until $100 was reached. Each broadcaster would choose the price at which it was willing to relinquish its spectrum, a so-to-speak reserve price, and would agree to sell its spectrum at that price if there is an eligible buyer in the reverse auction. However, assuming the broadcast spectrum is sold in the forward auction, each broadcaster would receive the highest clearing price paid to any broadcaster. This would encourage more broadcasters to participate because they have protection against having sold out too cheap as compared to others and, thus, the incentive to set an artificially high reverse price is reduced. Continuing the Midcity example above, at the conclusion of the reverse ascending auction, assume that five hypothetical broadcasters have declared themselves willing to sell at $20, $30, $40 and $50, respectively. Once bidding began in the forward auction, participants would immediately be able to recognize at what prices specific numbers of licenses in the Midcity market would clear. For example, if one participant was wiling to purchase a Midcity license at $20, one license would clear. If two participants were each willing to pay $30 each for a Midcity license, two licenses would clear at $30 each. And, at the end of the forward auction, if three participants

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[8] *NPRM* at ¶ 39.

were each willing to pay a maximum of $40 for a license, three licenses would clear at $40 each, and the broadcaster bidding $50 would have its license left unsold. This will increase the likelihood that broadcasters put their licenses in at a reasonable price because they know they will get a higher price if other broadcasters put their spectrum in at higher prices and there is adequate demand at that level.

The auction also should be structured to allow broadcasters who may have decided to sit out the auction to jump into the reverse auction if the price in their market is unexpectedly high. The Commission should strive to craft the auction procedures to allow for the reverse auction to be left open to accommodate such a circumstance.[9] In addition, this auction structure also promotes transparency for forward auction participants, as they will know clearly in advance what bids are required to make a certain number of licenses available.

However, the Commission must recognize that this type of transparency requires a reasonable period of separation between the reverse and forward auctions. This time period will allow prospective bidders in the forward auction to assess what spectrum will be available, and in what markets, and at what prices, and then make decisions on what spectrum is most attractive to them. Carriers also will have the opportunity during this period to perform due diligence on the spectrum, which is likely to increase the comfort with which they view the spectrum, therefore increasing the price paid. A concurrent reverse and forward auction[10] would not allow for this period of investigation, could result in confusion and possibly would generate unintended results.

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[9] To prevent gaming and to encourage broadcasters to participate, the Commission should impose a freeze on post-auction license transfers for some period of time to deter broadcasters from sitting out the auction and then using the available sales data to sell outside the auction.

[10] *See NPRM* at ¶ 67.

B. The Forward Auction

Once the Commission has identified the willing broadcasters and the prices at which they are willing to sell, the essential next step – the forward auction – must be conducted in a manner intended to ensure a wide distribution of licenses among competitors, as is the Commission's charge from Congress.[11] When designing the forward auction, the Commission must make it a priority not to repeat mistakes of the past. Auction 73 in particular provides a cautionary tale that should be studied carefully by the Commission. A review of the Auction 73 results reveals a stunning disparity in spectrum acquisition. Indeed, when the smoke cleared, Auction 73's results were just as MetroPCS had predicted and feared.[12] While the largest carriers were able to acquire the lion's share of the spectrum,[13] most competitive carriers (because the auction was blind and the auction process favored the larger carriers) were unpleasantly surprised to find that they had been stranded, along with the other competitive carriers, in the Lower 700 MHz A Block. Specifically, Verizon acquired a near-nationwide paired 22 MHz Upper 700 MHz C Block license, while AT&T effectively consolidated the Lower 700 MHz B Block. This uneven license dispersion sowed the seeds of the serious interoperability problem that continues to

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[11] When distributing licenses through competitive bidding, Congress has instructed the Commission to "promote[] economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. § 309(j)(3)(B).

[12] *See, e.g.*, Comments of MetroPCS Communications, Inc., WT Docket Nos. 96-86, 06-150 and 06-169; PS Docket No. 06-229, at 6-9 (filed May 23, 2007) ("MetroPCS 700 MHz Comments").

[13] *See* Jeffrey Silva & Mike Dano, *700 MHz auction ends: Wireless heavyweights biggest players, others surprise*, RCR WIRELESS (Mar. 21, 2008), *available at* http://www.rcrwireless.com/article/20080321/sub/700-mhz-auction-ends/ (noting that "[t]ogether, AT&T Mobility and Verizon Wireless spent $16.3 billion on 700 MHz licenses, making up the lion's share of the total $19.6 billon" spent at auction).

plague the 700 MHz band.[14] The Commission should do everything in its power to avoid a similar result with the incentive auction.

While the Commission cannot go back in time to correct the errors that marred Auction 73, it can refrain from making the same mistakes in the upcoming incentive auction. Several adjustments, each discussed in greater detail below, will serve to resolve some of Auction 73's problems and create a more level playing field for all carriers. First, the Commission should conduct an open, as opposed to blind, auction, which will improve the flow of information among all bidders and improve the prospects for success of the competitive carriers that were shut out of Auction 73. Second, the Commission should abandon combinatorial, or "package" bidding, which unfairly disadvantages smaller bidders and new entrants, and is contrary to the Commission's stated "building blocks" approach.[15] Third, the Commission should adopt its proposals, as discussed in greater detail below in Section III B, to configure the auctioned licenses in paired 5 MHz blocks and in manageable geographic license areas. Fourth, the Commission should refine its anti-collusion rules (which at present, prevent carriers from conducting regular business during the pendency of the auctions), its eligibility rules and bid withdrawal rules.

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[14] Indeed, the Commission has recently opened a rulemaking aimed at resolving this persistent problem. *See Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, 27 FCC Rcd 3521 (2012) ("*Interoperability NPRM*"). The root causes of this problem were (1) the auction was blind, (2) the Commission used combinatorial bidding, and (3) the licenses were skewed towards larger license areas and spectrum blocks coverage.

[15] *NPRM* at ¶ 125 (proposing the use of 5 MHz "building blocks").

1. The Forward Auction Is Best Designed As An Open Auction

MetroPCS has long been a strong opponent of blind bidding, and is on record against this unhelpful practice in both the Auction 66 and Auction 73 proceedings,[16] and remains convinced that open bidding is the preferred auction technique. Auctions are intended to establish a spectrum allocation process that will deliver licenses to those that value them most because they are in a position to put the licenses to the highest and best use. This outcome is only possible if bidders have sufficient information about the market being entered to make an intelligent valuation decision. Open bidding allows participants to engage in meaningful price discovery – which includes why certain blocks or licenses may be being bid higher than others. Perhaps the most important market information is knowing who the competitors are, what spectrum they are acquiring, and how much spectrum they have. For example, MetroPCS competes successfully against all of the major national incumbent wireless carriers in major metropolitan areas it has entered. MetroPCS has a very different business plan than these companies, and knows that it can distinguish its service offerings from these other providers. So, an area in which these known competitors are vying for more spectrum in the auction can easily be valued by MetroPCS. MetroPCS might decide to continue bidding at a higher per-POP price in this area, as compared to moving to a lower cost market containing new entrants with business plans that are less distinguishable from those of MetroPCS.

Further, knowing the identity of the bidders on particular spectrum is important information particularly given the current structure of the wireless market that has two dominant

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[16] MetroPCS 700 MHz Comments at 46-49; Comments of MetroPCS Communications, Inc. AU Docket No. 06-30, at 9-15 (filed Feb. 14, 2006) ("MetroPCS AWS Procedures Comments"); Reply Comments of MetroPCS Communications, Inc. AU Docket No. 06-30, at 8-14 (filed Feb. 28, 2006) ("MetroPCS AWS Procedures Reply Comments").

participants. For example, in Auction 73 the Lower A Block licenses were less expensive than the Lower B Block licenses largely because AT&T was bidding up the prices in Lower B Block as it sought to gain a major position there. Had bidders known that the Lower A licenses were going to have to be developed solely by smaller and regional carriers without the buying power of AT&T or Verizon to motivate equipment development, they might have placed higher bids on the Lower B Block licenses. Further, they would have understood that a bid for Lower A Block ran the risk that it may not be interoperable with Lower B Block. Had the bidding not been blind this relevant information would have been available.

This is a pro-competitive use of bidder information that is only available through open bidding. MetroPCS is mindful of the concerns expressed by some that incumbent carriers can use bidder identity information to block entry by potentially disruptive competitors. The reality is that MetroPCS is one of the competitive upstarts who would be the natural target of any such blocking strategy. Its rapidly growing low cost, all-you-can use, no long term contract services have succeeded in taking market share from all of the national incumbent carriers with which it competes. Nonetheless, having participated in multiple "open" auctions, MetroPCS still considers the benefit to it of having bidder information to far outweigh the risk that MetroPCS will be targeted and blocked from entering a new market by an incumbent.[17]

In addition, competitive carriers are well aware of the critical importance of economies of scale with respect to equipment availability, and are likely to structure their bids accordingly

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[17] *See* MetroPCS AWS Procedures Comments at 9-15 and MetroPCS AWS Procedures Reply Comments at 8-14. The pro-competitive benefits of having this information are clearly outweighed by any potential theoretical benefits of withholding this information. Providing bidding information is particularly important to competitive carriers and new entrants who will be relying upon outside financing to support their auction bids. In addition, complete transparency is important to the United States financial markets and helps promote confidence in the Commission's auction process.

given additional bidder information. For example, a competitive carrier may be willing to bid more for a license in a particular band if it knows that AT&T and Verizon also are acquiring licenses in this band, with an eye towards the greater likelihood of this band receiving equipment manufacturers' attention. Had Auction 73 not been a blind auction, the Commission may have seen a greater dispersion of licensees among the bands, which may have halted the current Lower 700 MHz interoperability fiasco before it started.

2. The Commission Should Abandon Combinatorial Bidding

Given the real-time complexity that the forward auction already presents to bidders, combinatorial bidding would add an unnecessary layer of complexity whose benefits are outweighed by the costs. This complexity creates a serious risk of unintended and undesirable consequences without providing any substantial public interest benefits. MetroPCS can attest from its own auction experience that the interaction of the bidder eligibility and combinatorial bidding rules added layers of complexity to the bidding in Auction 73. Not only did bidders have to manage eligibility when bidding on licenses which may be subject to a combinatorial bid, but also had to worry about being stranded with non-provisionally winning bids which might mature to actual winning bids. In effect, this means that funds are committed twice – once to the non-provisionally winning bid and once to another bid. In Auction 73, the Commission allowed bidders only one opportunity to withdraw a bid without penalty. And, once a bidder exhausts its bid withdrawal rights, it often ceases to have the eligibility it needs to bid on desired licenses.

Additionally, combinatorial bidding substantially benefits the largest carriers over smaller competitive carriers and allows them to skew outcomes with superior purchasing power. Indeed, it may allow larger bidders to acquire certain licenses at a discount. Perhaps most importantly,

combinatorial bidding undermines a market-driven "building block" approach,[18] by allowing large carriers to package large blocks of licenses together to the disadvantage of smaller bidders. MetroPCS supports the use of a single simultaneous multiple-round ("SMR") ascending auction format, which was used during the extremely successful Auction 66. This approach allows carriers to engage in price discovery and more effectively select their bids.

The use of a combinatorial bidding design would harm small, rural, and competitive carriers and prospective new entrants. In addition to exponentially increasing the complexity of bidding strategies, combinatorial bidding creates a "threshold problem," which occurs when small bidders cannot raise their bids enough to beat out a large bidder, even though the aggregate value of the small bidders may be greater than the large bidder's value. This also could lead to substantial competitive problems if some bidders are able to acquire spectrum at substantially lower prices per MHz/POP than other bidders. For example, the combinatorial bidding process in Auction 73 appears to have played a major role in enabling Verizon to acquire the C Block at a substantially lower per-pop price than the other spectrum sold for. Further, combinatorial bidding allows large incumbent licensees to acquire spectrum at the expense of new entrants who may have a more targeted approach to a specific geographic area. If the Commission wants to foster the "building block" approach that it has proposed, it should adopt a policy that will encourage both larger and smaller new market entrants to participate and not use combinatorial bidding which is skewed towards certain prospective bidders over others.

[18] *See NPRM* at ¶ 125.

3. The Commission Must Carefully Consider Anti-Collusion Rules, Bid Withdrawal Rules and Eligibility Rules

MetroPCS recommends that the Commission limit the duration and scope of the anti-collusion rule as much as possible. The current anti-collusion rule can have a chilling effect on pro-competitive discussions between applicants that are only tangentially related to an auction. Although MetroPCS agrees that ensuring the integrity of the auction by limiting collusion is an important goal, the Commission must not go overboard and allow anti-collusion protections to prohibit carriers' ordinary-course business discussions that pose no tangible risk to the auction process. Indeed, the Commission itself has noted in the past that the anti-collusion rule may affect the way in which "auction applicants conduct their routine business during the auction by placing significant limitations upon their ability to pursue business opportunities involving services in the geographic areas for which they have applied to bid for licenses."[19] In addition, the Commission has cautioned auction applicants that "discussions concerning, but not limited to, issues such as management, resale, roaming, interconnection, partitioning and disaggregation may all raise impermissible subject matter for discussion because they may convey pricing information and bidding strategy."[20] This being the case, there is a distinct public interest benefit in limiting the period of time that applicants are subject to the anti-collusion rule by holding to a minimum the time between the filing of the short form application and the auction commencement date. Further, the Commission should reevaluate the benefits of having so broad a rule rather than one which is more targeted. While bidders should not be permitted to discuss

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[19] *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374, ¶ 456 (1997).

[20] *Id.* at ¶ 457.

bids or bidding strategy, they should be able to engage in other business transactions so long as no auction bidding information is shared. The Commission should carefully evaluate whether the benefits of the current anti-collusion rules outweigh the clear burdens they impose, particularly when the length of the anti-collusion period is substantial.

The Commission also must carefully consider its bid withdrawal rules. Withdrawal penalties provide an important mechanism for policing insincere bidding. However, any bid withdrawal rules must guard against a circumstance where a legitimate, but stranded, bidder is forced to pay a penalty for what was a *bona fide* bid when entered. Any rules must recognize that circumstances change during the course of an auction, particularly if a carrier or new entrant is seeking to acquire a group of building block licenses to cover a geographic area. If that carrier is later outbid for certain critical portions of that geographic area, safety valve mechanisms should exist to allow that bidder to withdraw from the remainder of the complementary licenses and reuse that eligibility elsewhere without the sword of Damocles, in the form of bid withdrawal penalties, looming over its head. Allowing participants to withdraw *bona fide* bids based on changed circumstances will encourage the participation of new entrants into markets by providing comfort that they will not be forced to make the choice between a stranded license and stiff financial penalties.[21]

The Commission also should resist any urge to impose eligibility restrictions on participation in the forward auction. The established policy of encouraging the broad distribution of licenses among many operators can only be accomplished through broad participation by carriers of all sizes. A restrictive approach, where the government dictates

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[21] The Commission should throw the proverbial "book" at those bidders who deliberately engage in a strategy of driving up bids and then withdrawing. Indeed, the current penalties may be insufficient in such instances.

market composition, should be rejected in the absence of demonstrated market failure. While past auction policies have undermined the Commission's pro-competitive policies by skewing the distribution of licenses too much in favor of large incumbents (such as in Auction 73), with the corrective approaches recommended by MetroPCS herein, the Commission can expect its market-based participation approach to continue to foster competition and new entry. The Commission should not take the draconian approach of dictating outcomes by restricting eligibility. However, as discussed within, the Commission should create a system of bidding credits, available to all carriers, based on the amount of spectrum held in an area, rather than on size.

III. BAND PLAN AND LICENSING RULES

MetroPCS has long been an advocate of the "building block" approach to auctioning spectrum licenses. Robust auction participation and license dispersion are best served when participants are able to bid on licenses covering manageable geographic areas and in smaller spectrum block sizes. Further, time and time again, the building block approach proved successful in enabling auction participants to aggregate geographic licenses into larger geographical areas when desired while at the same time preserving the ability of smaller or regional carriers to obtain local licenses suited to their budgets and business plans. That being the case, MetroPCS is particularly pleased that the Commission has chosen to adopt this approach, and strongly supports the Commission's proposal to license spectrum from the incentive auction in Economic Area ("EA") geographic areas and in 5 MHz blocks.[22] However,

[22] *See NPRM* at ¶¶ 125, 148. While EAs have substantial benefits, other areas, such as DMAs, may also be sufficient. See *infra*.

some other aspects of the band plan proposals – such as the suggested construction requirements and guard bands – should be revisited for the reasons set forth in greater detail below.

A. Economic Areas (EAs) Are the Preferred License Size

MetroPCS believes that the proposed 5 MHz blocks in EA license areas will provide incentive for the greatest number of carriers to participate in the auction, as these license sizes can be used by new entrants in a market, by existing operators to expand their coverage, or by large national carriers looking to deepen their spectrum portfolio in a specific area. EAs correspond well to the geographic area that most wireless carriers consider a cohesive market for wireless services. EAs also neatly overlay existing coverage areas of wireless carriers, simplifying the bidding process as well as the network deployment process. Further, EAs generally will not cover more than one major metropolitan area – which is important. Major metropolitan areas are where spectrum is needed most because they have the greatest density of users, and the heaviest usage patterns. Accordingly, licensing by EAs will allow carriers to add needed capacity in select major metropolitan areas rather than forcing them to purchase licenses which cover large swaths of territory where additional capacity is unnecessary.

While MetroPCS believes that EAs are the right answer, the Commission may also want to consider using Designated Market Areas ("DMAs") if further analysis reveals that the licensing process would be meaningfully simplified by maintaining the same market area served by the relinquishing broadcaster. However, using DMAs only makes sense if there is a significant increase in the total number of licenses that would be available in the forward auction after re-packing. If not, it would not be worth introducing yet another license area into the

already complicated wireless license area mix.[23] Otherwise, it would be unfortunate to use DMAs which might split an EA into multiple markets.

No matter what geographic designation is used for licensing spectrum in the forward auction, the Commission must ensure that *all* available spectrum is licensed. Given the possible reconfiguration of DMAs into EAs, or the existing gaps between DMAs, the Commission must pay close attention and ensure that all white spaces among and between relinquished licenses are available for auction. Any "gaps" between relicensed areas should either be added to complete a full EA geographic block or separately auctioned for commercial wireless use. Further, even where a broadcast station is *not* put up for sale in the incentive auction, the Commission should still auction the remaining white space outside of the station's broadcast area in order to capture additional spectrum and put it to its highest and best use.

B. Spectrum Should Be Licensed In Paired 5 MHz Blocks Wherever Possible

MetroPCS strongly supports the use of "building block" sized spectrum blocks, and is pleased that the Commission has chosen to propose 5 MHz blocks for use in the forward auction. Using the auction building block approach has worked well for the Commission in earlier auctions and MetroPCS believes the same will be true here. The 5 MHz block size has two important benefits, one policy-related and one practical.

As a policy matter, 5 MHz blocks are an ideal size for competitive carriers and new entrants into a market, while larger spectrum blocks tend to favor the resource-rich, largest carriers. MetroPCS is on record demonstrating that the AWS Auction was successful in no small part because the Commission took a "building block" approach in the band plan and offered a

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[23] As the Commission knows, wireless licenses are issued variously in CMAs, RSAs, EAs, MTAs and REAGs among other areas.

sufficient amount of spectrum in small enough geographic areas and spectrum block sizes to permit meaningful participation by diverse carriers – including competitive carriers and prospective and new entrants in the marketplace.[24] When larger spectrum blocks are used, history has demonstrated that they disproportionately go to the largest carriers. For example, Verizon acquired the 22 MHz Upper 700 MHz C Block nearly-nationwide, and has since consolidated additional C Block licenses on the secondary market.[25] The Commission should avoid placing its thumb on the scale in favor of the largest carriers, and adopt its 5 MHz block proposal in order to support competitive carriers and new entrants.

As a practical matter, 5 MHz blocks also make sense given the 6 MHz blocks that broadcasters are relinquishing as part of the reverse auction. Given the current band configuration proposed by the Commission,[26] guard bands will not be necessary between the individual 5 MHz blocks, as the uplink and downlink spectrum is neatly stacked in separate piles. Additionally, the current advanced wireless standard – long-term evolution ("LTE") – is not configured for use in 6 MHz blocks, but rather 5 MHz blocks. Thus, carriers could wind up with a stranded 1 MHz of spectrum if the auction proceeded in 6 MHz blocks. 5 MHz blocks also could promote broader license dispersion. For each 30 MHz of spectrum reclaimed from broadcasters, the Commission can auction six licenses, as opposed to merely five. This is likely to increase the dispersion of licenses among competitors, as well as the total revenue collected as part of the forward auction.

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[24] MetroPCS 700 MHz Comments at 4.

[25] *See Auction of 700 MHz Band Closes*, Public Notice, Attachment A (rel. Mar. 20, 2008); *see also* ULS File No. 0004343143 (On November 16, 2010, Verizon acquired the C Block license covering Alaska); ULS File No. 0005501846 (On December 12, 2012, Verizon filed an application proposing to acquire the C Block license covering the Gulf of Mexico).

[26] *See NPRM* at ¶¶ 123-26.

One issue the Commission will need to address is what to do with any "odd lot" spectrum that might be left after the Commission reconfigures into 5 MHz channels. For example, if the two 6 MHz channels are returned, using 5 MHz channels will result in two 5 MHz channels with 2 MHz left over. There are several solutions to this problem. First, the Commission could license the 2 MHz separately. Since LTE can be used in a channel configuration as small as 1.4 MHz in width, a 2 MHz channel should be usable. Second, such spectrum could be used as guard bands to the incumbent broadcasters. Third, the spectrum could be used by white space devices. Of these approaches, MetroPCS favors the first two.

MetroPCS also strongly recommends that spectrum be licensed in paired 5 MHz blocks whenever possible (a 5 x 5 MHz configuration). Paired blocks generally are the strong preference of the industry, and are critical to support new entrants into a market. As a new entrant, having both uplink and downlink spectrum is an obvious necessity, and auctioning spectrum in unpaired blocks risks discouraging new entrants from bidding in the auction, lest they become stranded with a lone block of uplink or downlink spectrum. While MetroPCS understands that the nature of the incentive auction and resulting reconfiguration of the 600 MHz band is likely to necessitate a certain number of unpaired blocks, it urges the Commission to auction paired spectrum whenever possible.

Further, where possible the Commission should, in repacking the band, maximize the extent to which the same paired spectrum is available for CMRS use in as much of the country as possible. While it may be technically possible to utilize different channels in different areas, the cost of handsets and the likelihood of potential interference can be reduced if the same channels are used. Further, maximizing the use of common channels will reduce interference problems for other CMRS licenses. Coordination with other CMRS carriers will be simplified and only

broadcasters next to the common CMRS channels will have to coordinate to eliminate interference.

C. Interim Construction Benchmarks Are Unnecessary; Any That Are Imposed Should be POPs-Based

Although the Commission proposes to impose interim construction benchmarks on licenses obtained in the incentive auction, such requirements are unnecessary and are counter-productive. Existing operators and new entrants spend millions upon millions of dollars acquiring spectrum at auction, and the expenditure of such large sums provides a strong natural incentive to turn those bare licenses into operating wireless businesses. As a result, any license-holder is under a market imperative to roll out service over a license area as promptly as is commercially reasonable. Any artificial buildout requirements simply force a licensee to make decisions based on a government-mandated, one-size-fits-all construction requirement, rather than based on the needs of the particular market that they are serving. Indeed, the Commission itself has recognized that "construction requirements focusing solely on population served or geography covered may not necessarily reflect the most important underlying goal of ensuring public access to quality," and that buildout rules should avoid "construction . . . solely to meet regulatory requirements rather than market conditions."[27] Further, construction requirements

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[27] *See Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Part 1 of the Commission's Rules – Further Competitive Bidding Procedures, Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions, Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, Promoting Efficient Use of Spectrum Through Elimination of Market Barriers to the Development of Secondary Markets, Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Amendment of Part 2 of the Commission's Rules to*

tend to unfairly favor incumbent carriers over new entrants and larger companies over smaller ones. Incumbents are in a preferred position since constructing an additional channel at existing sites is generally much easier and less costly than constructing completely new sites. Larger carriers are favored over smaller carriers because larger carriers are able to spread the diseconomic construction cost over a greater number of subscribers than smaller carriers or new entrants.

Rather than adopting inherently arbitrary interim buildout requirements, the Commission should adopt the end-of-term substantial service construction requirement that is used in the AWS band.[28] Indeed, with the AWS band the Commission can see the market, as opposed to artificial buildout requirements, at work. Although the AWS licenses granted in Auction 66 do not have a substantial service benchmark date for another eight years in many cases, licensees have already deployed significant operating networks over this spectrum. MetroPCS, for example, was one of the first carriers to operate over the AWS spectrum purchased in Auction 66 – *more than a decade prior* to the substantial service benchmark date.[29] T-Mobile and Leap Wireless also have deployed their AWS spectrum rapidly in the absence of any interim construction benchmarks.[30] Thus, the Commission should draw on the successful experience of

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Allocate Spectrum Below 3 GHz for Mobile and Fixed Wireless Services to Support to Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, ¶ 276 (2006).

[28] *See* 47 C.F.R. § 27.14.

[29] *See, e.g.*, Kevin Fichard, *MetroPCS to complete AWS shift in one year*, CONNECTED PLANET, (May 9, 2008) *available at* http://connectedplanetonline.com/home/news/mettropcs-leap-aws-0509/.

[30] Further, AT&T and Verizon Wireless now are reportedly starting to develop AWS more aggressively – again well before the construction deadline.

Auction 66 and the AWS band and decline to adopt buildout requirements, and instead let the market encourage deployment.

If, however, the Commission is determined to include buildout requirements as part of the band plan, any such buildout requirements should be based on the population served ("POPs-based") not upon geographic coverage requirements. A POPs-based buildout requirement is a far more accurate measure of useful coverage in a market, as opposed to an arbitrary geographic percentage determined by regulatory fiat. Geographic buildout requirements fail to account for differences in license area, and create unintended difficulties for licensees. For example, the time and resources required to serve a fixed geographic area in the Rocky Mountains is substantially different from the time and resources required to serve that same fixed area in in the plains of Nebraska. It is far better to allow licensees to satisfy buildout requirements based on population coverage, which, although imperfect, is a better substitute than is a geographic-based requirement for the coverage area that a licensees might choose to cover on its own.

D. Any Guard Band Must Be Minimized To The Fullest Possible Extent

As Congress is the source of the Commission's authority to conduct the incentive auction, the Commission is bound by Congress' direction in the Spectrum Act that guard bands be "no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands."[31] With this direction, Congress expressed its clear preference for the auction of licensed spectrum as opposed to the creation of larger-than-necessary guard bands for unlicensed use. As a result, the Commission should design a band plan that carefully minimizes any guard band, to the extent technically feasible, in favor of unleashing additional

[31] Middle Class Tax Relief and Job Creation Act of 2012, Pub L. No. 112-96, § 6407(b), 125 Stat. 156 (2012) ("Spectrum Act"); *see also NPRM* ¶ 126.

spectrum for commercial mobile wireless use. Indeed, the Commission has already determined in its proposed band plan that no guard band is necessary between the 600 MHz uplink spectrum and the 700 MHz uplink spectrum, nor is a guard band necessary between the 600 MHz downlink spectrum and Channel 37, assuming Channel 37 operations remain the same.[32] MetroPCS also believes that the Commission's current proposal for a 6 MHz guard band between the 600 MHz uplink spectrum and the remaining television broadcast spectrum[33] is excessive, and proposes that the 6 MHz be reduced to a technically reasonable 3 MHz. Rather than reserve critical spectrum resources for possible future unlicensed use, the Commission should address the acute problem before it – the serious spectrum crunch[34]– and the dire need of commercial operators for additional spectrum. In doing so, the Commission will be upholding the desires of Congress, its source of authority for the incentive auction, and serving the needs of consumers.

It is also important that the Commission design strict "rules of the road" for any unlicensed use in any guard band. The goal of the incentive auction is to provide much-needed additional capacity for commercial mobile wireless use, and this use must not be jeopardized by potentially interfering unlicensed use.

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[32] *See NPRM* at ¶¶ 154-55.

[33] *See NPRM* at ¶ 156.

[34] Despite efforts to mitigate the problem, the spectrum crunch remains an ongoing concern for the mobile wireless industry. *See, e.g.*, Larry Downes, *At CES, FCC chair warns of mobile 'spectrum crunch'--for the third time*, CNET.COM (Jan. 12, 2012), *available at* http://www.cnet.com/8301-33363_1-57357611/at-ces-fcc-chair-warns-of-mobile-spectrum-crunch-for-the-third-time/.

E. The Commission Should Adopt Bidding Credit Programs That Incent Wide Distribution Of Licenses

MetroPCS strongly supports the Commission's proposal to encourage wide participation in the forward auction by wireless carriers, and hopes that the auction will foster increased participation by competitive carriers and new entrants. Encouraging these entities to participate is a key ingredient in the Commission's mandate to ensure the wide distribution of spectrum licenses.[35] Although the *NPRM* proposes using the 15 and 25 percent bidding credits tied to size of bidder that it has used in the past,[36] MetroPCS submits that the goal of encouraging the wide dispersion of licenses can be better accomplished by tying bidding credits not to entity size, but rather to current spectrum holdings. As it has recommended in the past, MetroPCS proposes its Broadband Incentive Discount ("BID") program for the Commission's consideration.

The BID program is designed to foster new and increased competition in the wireless marketplace. Rather than allocating designated entity ("DE") bidding credits based upon an applicant's size, credits should be given to applicants in inverse proportion to the amount of attributable spectrum that the applicant holds in the auctioned license territory.[37] Specifically, MetroPCS proposes the following sliding discount scale:

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[35] *See* 47 U.S.C. § 309(j)(3)(B).

[36] *NPRM* at ¶ 295.

[37] As an alternative to a pure spectrum test, the Commission could adopt a spectrum efficiency and use test which would reward carriers who are efficiently using existing spectrum resources and are in danger of running out of capacity over bidders who are inefficient users of spectrum and are not in a severe need for additional spectrum. Spectrum utilization requirements are not new to wireless. In the SMR service, the Commission limited an applicant's ability to acquire additional spectrum until a minimal amount of usage was occurring on existing channels. Using either a spectrum amount or an efficiency/use test, would favor those who most need spectrum rather than allowing carriers to warehouse spectrum.

Attributable Spectrum	% Discount
0 to 35 MHz	60%
35 to 70 MHz	40%
70 to 105 MHz	20%
105+ MHz	0%

In addition, incumbent applicants would be precluded at the initial auction stage from acquiring any license that would cause the applicant to exceed the pre-auction spectrum screen.[38] Applicants also would be attributed with all spectrum held by the applicant, the applicant's affiliates, all disclosable interest holders in the applicant, and all companies with which the applicant had an auction-related agreement.

Designed in this manner, the BID program creates a strong incentive for investment in broadband by wireless providers. The program also promotes innovation by creating opportunities for the licensees who are most likely to introduce disruptive, cutting-edge technologies and services. In addition, this would create licensing for a broader range of participants including rural, small, mid-tier carriers, new entrants and traditional designated entities, while simultaneously serving the public interest and statutory mandates by promoting the dissemination of licenses to a broader group of licensees. In sum, the BID program promotes the distribution of licenses to those who need them and are most likely to put them to beneficial use, while also counteracting the inherent cost advantages of incumbents with substantial spectrum resources.

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[38] By "pre-auction spectrum screen" MetroPCS means the screen in effect prior to the allocation of the spectrum that is the subject of the auction, such as any screen put in place by the Commission's pending mobile spectrum holdings proceeding. *See Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012).

F. The 600 MHz Band Must Be Subject To An Interoperability Rule

MetroPCS strongly supports the Commission's efforts to design a band plan that will result in a single, interoperable 600 MHz Band.[39] Indeed, the Commission has specifically stated that "one of [its] goals in deciding how best to license this wireless spectrum is encouraging interoperability."[40] Such a goal is wise in light of the current problems plaguing the Lower 700 MHz Band. As the Commission is well aware,[41] the lack of interoperability across the Lower 700 MHz Band has significantly delayed deployment, particularly among small licensees in the Lower A Block.[42] This has created an unfortunate situation for all involved. Competitive carriers, who are starved for spectrum are unable to use the spectrum already in their hands, while their customers are denied the benefits of improved coverage or advanced wireless services that such spectrum would provide. The Commission must ensure that this does not happen again in the 600 MHz Band by mandating a single band class across the entire band. Such a requirement will serve to reduce equipment costs for competitive carriers, encourage deployment and ultimately will better promote the public interest.

IV. CHANNEL 51 MUST BE CLEARED AT THE EARLIEST POSSIBLE DATE

As the Commission knows, interference issues between Channel 51 broadcasters and Lower 700 MHz A Block licensees have substantially hindered deployment in the band. MetroPCS itself has struggled with resolving these interference issues, given the wide exclusion zone granted to Channel 51 broadcasters and the reluctance of such broadcasters to negotiate a

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[39] *NPRM* at ¶¶ 160-64.

[40] *NPRM* at ¶ 162.

[41] *See generally Interoperability NPRM*.

[42] *Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A and B Block Licenses*, Public Notice, 27 FCC Rcd 14049 (WTB 2012).

channel relocation.[43] In order to resolve this long-pending problem, the Commission should make every effort to encourage voluntary Channel 51 relocation *prior to* holding the incentive auction. Indeed, the Commission specifically seeks comment on "resolving issues related to coexistence of Lower A Block operations and Channel 51 even before we commence the incentive auction by facilitating requests for channel relocation."[44]

To the extent that the Commission is unable to resolve the Channel 51 interference problem prior to the auction, it should use its incentive auction to resolve this problem as soon as possible. One approach would be to hold an early "trial" auction of the Channel 51 licenses only. This approach has the dual benefit of clearing Channel 51 interference at an early date, while also allowing the Commission to see both the reverse and forward auctions in action, but on a smaller and more manageable scale. In any event, the Commission should require in its auction rules that Channel 51 be the first station cleared in every market, which will ensure that, at the very least, the auction's end result will be an unencumbered A Block.

MetroPCS urges the Commission to consider all reasonable alternatives, and to adopt policies aimed at promoting Channel 51 relocation at the earliest possible date. In view of this goal, and given the fact that all Channel 51 stations will be relocated as a result of the incentive auction, the Commission should consider an early mandatory relocation of Channel 51 broadcasters. Since Channel 51 is guaranteed to be relocated post-auction, there is little reason

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[43] *See* ULS File No. 0005452812, Exhibit 1, at 6-9 (discussing MetroPCS' extensive efforts to resolve the Channel 51 interference problem impacting its Boston, MA 700 MHz license).

[44] *NPRM* at ¶ 165. Such a policy also would go a long way to resolving the interoperability problem as AT&T specifically has identified Channel 51 interference as one of its reasons for refusing to support interoperability.

that Commission should not require these broadcasters to relocate to comparable channels immediately, while reimbursing prudent out-of-pocket costs.

V. THE COMMISSION SHOULD ENCOURAGE COOPERATIVE EFFORTS BETWEEN THE WIRELESS AND BROADCAST INDUSTRIES

On January 24, 2013, a joint filing was made by AT&T, Inc., Intel Corporation, the National Association of Broadcasters, Qualcomm, T-Mobile and Verizon Wireless setting forth a series of consensus principles that they recommend be used as core band plan principles to maximize the amount of spectrum available for mobile broadband services and minimize interference and deployment challenges (the "Joint Letter").[45] Notably, several of the core principles correspond to the comments being made by MetroPCS including maximizing the amount of paired spectrum, relying upon 5 MHz spectrum as building blocks for the band plan, and providing guard bands no larger than technically necessary to guard against harmful interference.[46] Not surprisingly, the Joint Letter has been cited in the trade press as a possible sign that wireless companies, broadcasters and equipment manufacturers can coordinate to help the Commission formulate a workable auction plan, rather than having the plan forged in an adversarial context.[47]

MetroPCS urges the Commission to do all it can to encourage members of the affected industries to continue to cooperate in an effort to come up with a workable plan that all constituencies can support. The simple reality is that participation in either the reverse auction or

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[45] *See* Letter of Joan Marsh, Peter Pitsch, Rick Kaplan, Dean Brenner, Kathleen Ham and Charla Rath to Gary Epstein, Incentive Auction Task Force Chair, GN Docket No. 12-268 filed January 24, 2013 (the "Joint Letter").

[46] *See* Joint Letter at p. 1.

[47] *See, e.g.*, John Eggerton, *NAB Wireless Companies Agree on Band Plan 'Core Principles,'* Multichannel News, (Jan. 24, 2013) *available at* http://www.multichannel.com/news-article/nab-wireless-companies-agree-band-plan-core-principles/141379.

the forward auction is optional. As a consequence, the incentive auction will only succeed in attracting a significant number of buyers and sellers if the band plan and licensing process enjoy wide support in the industries. The Commission should therefore actually support voluntary industry efforts to arrive at consensus or near consensus positions.

VI. CONCLUSION

The foregoing premises having been duly considered, MetroPCS strongly recommends that, consistent with MetroPCS' recommendations in these Comments, the Commission adopt incentive auction rules encouraging simplicity, transparency and flexibility. By doing so, the Commission will be putting broadcasters, wireless providers and itself in the best position to reap the success that the incentive auction offers.

Respectfully submitted,

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